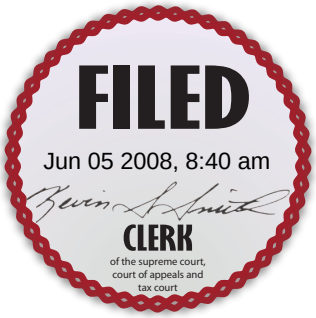

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IN THE
COURT OF APPEALS OF INDIANA

ANGEL ALEMAN GONZALEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A04-0709-CR-514
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0612-FD-203

June 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Angel Aleman Gonzalez appeals the sentence imposed upon his conviction for one count of battery causing injury to a person less than fourteen years of age, a class D felony, after his plea of guilty to that charge and several others.

We affirm.

ISSUE

Whether the sentence imposed is inappropriate in light of the nature of the offense and the character of the offender.

FACTS

On June 2, 2006, in Cause No. 449, the State charged Gonzalez with two class C misdemeanors: operation by one who never received a driver's license, and refusal to provide identification. On October 13, 2006, in Cause No. 813, Gonzalez was again charged with the class C misdemeanor offense of operation by one who never received a driver's license. On December 11, 2006, in Cause No. 203, the State charged Gonzalez with two class D felonies: residential entry, and battery against a person less than fourteen years of age. Finally, on February 20, 2007, in Cause No. 35, the State charged Gonzalez with neglect of a dependent, a class D felony; disorderly conduct, a class B misdemeanor; and operation by one who never received a driver's license, a class C misdemeanor.

On July 11, 2007, Gonzalez and the State tendered to the trial court a plea agreement as to all four causes. The agreement provided that Gonzalez would plead guilty to the following three offenses: refusal to provide identification, a class C

misdemeanor (Cause No. 449); neglect of a dependent as a class A misdemeanor (Cause No. 35); and battery resulting in bodily injury to a person under the age of fourteen, a class D felony (Cause No. 203). The agreement further provided that the State would dismiss the other five "pending counts," and recommend a sentencing "'cap' of two years on the total executed portion of the sentence, with the balance suspended." (App. 30).

The trial court held a hearing on July 11, 2007. Gonzalez testified that on December 10, 2006, when he was age twenty-two, he went to the residence of Maria Pineda. Pineda's eleven-year-old daughter, M.M.G., was playing outside but ran inside after seeing him. Gonzalez pounded on the door, asking for Pineda. When the door was not opened for him, he pushed it in and then hit M.M.G. in the head and knocked her down, inflicting pain and swelling to the back of her head. (Tr. 12, 25). The trial court found a factual basis for Gonzalez's plea of guilty to battery against a person less than fourteen years of age, as well as the other offenses specified in the plea agreement.

On August 13, 2007, the trial court held another hearing, at which it accepted Gonzalez's guilty pleas and entered judgment of conviction. It proceeded to sentencing. The trial court ordered Gonzalez to serve four days for the failure to identify offense, a class C misdemeanor, and 358 days for the neglect of a dependent offense, as a class A misdemeanor. "[O]n the battery case," a class D felony, the trial court ordered that Gonzalez "be committed to the Indiana Department of Correction for one year." (Tr. 36).

DECISION

Gonzalez argues that his one-year "sentence for Battery as a Class D Felony under IC 35-42-2-1(a)(2)(B)" is "inappropriate." Gonzalez's Br. at 4. Citing Indiana Appellate

Rule 7(B), he asserts that the nature of the offense was his "expression of concern for [M.M.G.]," and that his character is shown by the fact that he "had no prior felony convictions." Gonzalez's Br. at 4, 6. We are not persuaded.

We have the authority to revise a sentence if, "after due consideration of the trial court's decision," it is found that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The burden is on the defendant to persuade the reviewing court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The sentence challenged by Gonzalez is the one-year term imposed for the class D felony offense. The advisory sentence for a class D offense is one and one-half years. *See* Ind. Code § 35-50-2-7. Thus, the trial court imposed a sentence less than the advisory term. As to the nature of the offense, Gonzalez admitted hitting and knocking down M.M.G., an eleven-year-old child with whom he claims to have a stepfather-stepchild relationship. At the sentencing, he asserted that although "he actually hit" M.M.G., he acted "not in a way that he would harm her" and "like a father figure." (Tr. 32). As to his character, Gonzalez's history indicates that since the age of fifteen, he has failed to conform his conduct to the dictates of the law. The summary of his five-page criminal history is that he had "a significant history of property related offenses" as a juvenile, followed by "a significant history of motor vehicle criminal offenses" as an adult. (App. 57).

His appeal asserts that his "remorse" should be considered, Gonzalez's Br. at 6, but the statement he cites in the PSI simply expresses that he was "sorry for all the

trouble," not sorry for having struck M.M.G. and knocked her down. (App. 59). Hence, there is no clear expression of remorse. Further, it is for the trial court to judge the sincerity of statements of remorse. *Johnson v. State*, 855 N.E.2d 1014, 1016 (Ind. Ct. App. 2006) (citing *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002)), *trans. denied*.

Gonzalez also reminds us that he pleaded guilty, "saving the State the expense and difficulty of trial in four separate cases." Gonzalez's Br. at 5. "[A] defendant who pleads guilty deserves 'some' mitigating weight be given to the plea," but "a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return." *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007). In exchange for guilty pleas on three criminal charges, Gonzalez received the benefit of having five other criminal charges dismissed. Moreover, the sentence imposed was less than the advisory term. Hence, the trial court necessarily found that the circumstances were somewhat mitigating.

Gonzalez has failed to carry his burden of persuading us that the one-year sentence imposed for his committing battery upon an eleven-year-old child is inappropriate.

Affirmed.

NAJAM, J., and BROWN, J., concur.